



COAL MINING AND RECLAMATION PERMIT APPLICATION TO REVISE A PERMIT (ARP)

Issued To: AMERICAN ENERGY CORP
43521 MAYHUGH HILL RD
BEALLSVILLE, OH 43716

Permit Number: D-1159
Application Number: R-1159-3

Telephone: (740) 926-9152

Effective: 01/14/2002
Expires: 01/25/2003

ARP Type:
Stream/Wetland Mitigation

The issuance of this ARP means only that the application to conduct a coal mining operation meets the requirements of Chapter 1513 of the Revised Code, and as such DOES NOT RELIEVE the operator of any obligation to meet other federal, state or local requirements.

This ARP is issued in accordance with and subject to the provisions, conditions, and limitations of Chapter 1513 of the Revised Code and Chapters 1501:13-1, 1501:13-3 through 1501:13-14 of the Administrative Code.

The approved water monitoring plan for this ARP is:

Quality: N/A

Quantity: N/A

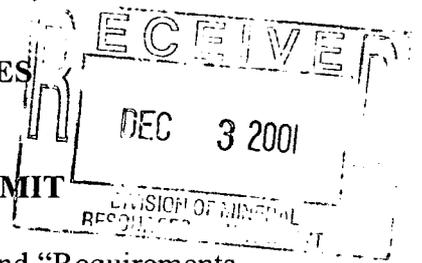
Note: Any previous condition(s) imposed on this permit, or subsequent adjacent areas, also apply to this ARP unless noted otherwise.

Signature:

Michael J. Sponer by Rev. G. B. S.
Chief, Mineral Resources Management

Date: 01/14/2002

**OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINES AND RECLAMATION**



APPLICATION TO REVISE A COAL MINING PERMIT

Note: Refer to the Division's "General Guideline for Processing ARPs" and "Requirements for Specific Types of Common ARPs" for guidance on submitting and processing ARPs.

1. Applicant's Name American Energy Corporation, F.K.A. Bennoc, Inc.

Address 43521 Mayhugh Hill Road

City Beallsville State Ohio Zip 43716

Telephone Number 740 - 926 - 9152

2. Permit Number D-1159

3. Section of mining and reclamation plan to be revised:

Part 3, Page 27, Item D(18)

4. Describe in detail the proposed revision and submit any necessary drawings, plans, maps, etc.:

TO SUBMIT THE WETLAND MITIGATION PLAN. (Please note that this mitigation plan was submitted to and approved by OEPA prior to any permit transfer, therefore, the attached addenda is labeled "Bennoc, Inc.")

5. Describe in detail the reason for requesting the revision:

AS REQUESTED BY ODNR, DMRM TO LIFT CONDITION ON ISSUED ARP.

6. Will this revision constitute a significant alternation from the mining and reclamation operation contemplated in the original permit? Yes, No.

(Note: refer to paragraph (E) (2) of 1501:13-04-06 of the Ohio Administrative Code to determine if a revision is deemed significant.)

If "yes," complete the following items 7 through 9.

7. In the space below give the name and address of the newspaper in which the public notice is to be published.

N/A

8. In the space below give the text of the public notice that is to be published. (Include the information required by paragraph (A)(1) of 1501:13-05-01 of the Ohio Administrative Code.)

N/A

9. In the space below give the name and address of the public office where this application is to be filed for public viewing.

N/A

I, the undersigned, a responsible official of the applicant, do hereby verify the information contained in this revision request is true and correct to the best of my information and belief.

Robert D. Moore
Print Name

11/28/01
Date

[Signature]
Signature

President
Title

Sworn before me and subscribed in my presence this 28th day of November, 20 01

[Signature]
Notary Public

NOTARY PUBLIC
State of Ohio
Commission Expires December 31, 2006

FOR DIVISION USE ONLY
APPROVED

This request is hereby [Signature]
Michael Y. Sporensky
Chief, Division of Mines and Reclamation

1-14-02
Date

RECLAMATION AND MITIGATION PLAN
BENNOC ALLISON ADJACENT AREA
SURFACE MINING PERMIT APPLICATION

This Mitigation Plan is based upon the MINIMAL DEGRADATION ALTERNATIVE as defined on pages 9 thru 15 of this document. The proposed mining will result in unavoidable impacts to 629 feet of stream, including the length of stream affected by pond water behind the dams. 0.15 acres of category 2 wetlands will be inundated by the pond in Unnamed Stream "H". The proposed mitigation is based upon the combined areas of wetland in the original area of this mining site combined with the area affected in this adjacent area. Both wetland Determination and stream studies were completed by 3D/International Division of BHI of Cincinnati, Ohio. The goal of this mitigation is to establish the highest potential use consistent with the morphology of the reclaimed area.

It is proposed to mitigate these waters in place after the mining operation is completed. During mining, water is monitored and treated to conform to N.P.D.E.S. requirements. This monitoring and treatment is done at or near the upstream end of the pond so that water quality is controlled as far away from the receiving stream as possible. Water monitoring and treatment includes the items listed on the "General Wetland Mitigation Monitoring Requirements" which is included as page 4 with this mitigation plan.

STREAM RECONSTRUCTION

Pond 009 and 010 will be removed after completion of mining. Pond 009 affected a total of 286 feet of stream including the length of the pond. Pond 010 affected 343 feet. The streams upstream of the dam sites will be reconstructed as close to pre-mining conditions as possible. The stream bed configuration and meanders will be reproduced. Only that area directly affected by the dam and pond will be reconstructed. These streams will be returned to their original beds after completion of mining.

Pond 009 will be reclaimed at a grade of 0.0035 and pond 010 will be reclaimed at a grade of 0.03. If the 2 year 6 hour storm produces appropriate flow rates, a grass lined trapezoidal channel will be constructed. Graded rock may be incorporated on outside turns and on areas that could be subject to erosion. The reconstructed channels will approximate a Rosgen Type C configuration.

STREAM BUFFER ZONES:

A buffer zone will be established along the reconstructed streams. The buffer zone will extend a distance of 50 feet on either side of the stream. These areas will be planted with the following mixture of vegetation:

<u>SPECIES</u>	<u>CONCENTRATION</u>
Silky Dogwood	8 X 8 grid
Red pine	8 X 8 grid
American sycamore	8 X 8 grid
Foxtail millet	10 lb/acre
Redtop	2 lb/acre
Birdsfoot trefoil	6 lb/acre

WETLAND MITIGATION:

There are 0.15 acres of wetland affected on this adjacent area. There were 0.273 acres affected on the original permit making a total of 0.423 acres to be mitigated. At a ratio of 1 1/2:1, the required mitigation for the entire site is 0.635 acres for the entire permit area including the original. There were 0.54 acres of wetland mitigation included in the original mining area leaving 0.095 acres of remaining mitigation required.

It is proposed to mitigate the new disturbance by simply adding a 0.095 acre (4138 S.F.) Area to wetland #5. This wetland was delineated on the original permit. It is

located near Township Road 74. The existing wetland has been graded as a palustrine emergent scrub shrub wetland. It is dominated by grasses, sedges and bulrushes. This existing wetland area is located around the perimeter of a small pond and has been established for many years. These features should assure the success of the mitigation. During reclamation, the mitigative area will be configured to provide the widths, depths and flow characteristics required.

Since this is an existing wetland located on the perimeter of a pond, only one plant zone is proposed. This will be zone #3, shallow water extending into the fringe. After preparation, soft rush and sedge will be planted in the mitigative area. Soft rush stock will be rhizomes planted at 6 feet on center. Sedge stock will be seed dispersed at the rate of 1/2 lb/acre.

MITIGATION CONTINGENCY PLAN:

Should it become evident that the wetland mitigation plan has failed, steps will be taken to remedy the failure. Replanting of any significant bare spots which develop in the grasses or legumes will be undertaken. If trees or shrubs have failed, replanting of the necessary replacement species will be undertaken in the same growing season.

If it becomes necessary to replant the entire area, then this will be undertaken during the following spring.

Should the integrity of the reconstructed stream channels deteriorate to the point that significant erosion is occurring, then the erosion damage will be repaired. If it becomes evident that the design is inadequate then new specifications will be developed and implemented.

SUCCESSION:

The mining company has been made aware that the mitigative wetland area cannot ever be filled, drained or otherwise converted to upland and that if the property is ever sold, the deed shall ensure that the wetland will not be so converted. This information was conveyed to the company by letter dated August 17, 1999.

General Wetland Mitigation Monitoring Requirements

Annual water quality, hydrology and vegetation surveys shall be conducted. A report containing these data shall be submitted to Ohio EPA for each of five consecutive years following completion of mitigation construction. The first annual report is due to Ohio EPA by December 31 of the year following completion of mitigation construction. All subsequent reports shall be submitted by December 31 of each of the five monitoring years. The reports shall contain, at a minimum, the following information:

Water Chemistry Monitoring: A grab sample shall be collected in May of each monitoring year in each wetland mitigation area. The samples shall be analyzed for ammonia, nitrates, nitrite, carbon, total sulfates, total iron, total manganese, specific conductivity, pH, turbidity, total suspended solids, heavy metals, and biochemical oxygen demand.

Hydrology Monitoring: Water level data shall be collected in May and late August of each monitoring year. Ground water levels shall be measured in the absence of inundated conditions.

Vegetation Monitoring: The location and name of each plant community type within the mitigation area and buffer area shall be marked on a scaled drawing or scaled aerial photograph (base map) and named.

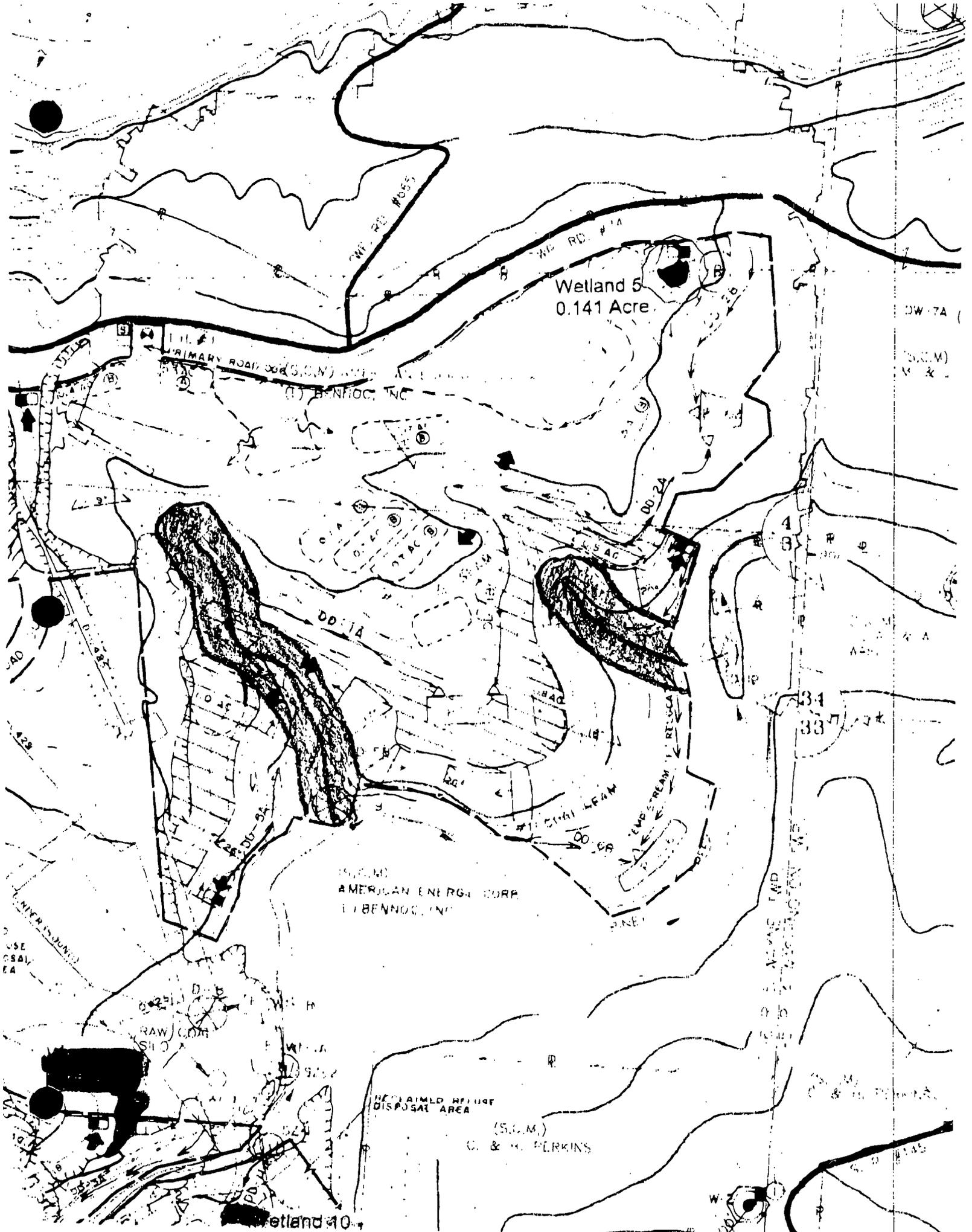
A representative observation point shall be selected in each plant community type in each distinct wetland mitigation area. This shall be a point which best represents the characteristics of the entire plant community. The observation points shall be marked on the base map.

The dominant plant species shall be visually determined in each vegetation layer of each community type, and the scientific names of these species shall be included in the report. Dominant species are those species which have the greatest relative basal area (woody overstory), greatest height (woody understory), greatest percentage of aerial coverage (herbaceous understory, and/or greatest number of stems (woody vines).

Each sample point shall be photo-documented from the same position and angle during July of each monitoring year.

The applicant shall arrange an on-site mitigation meeting with Ohio EPA on the third year after wetland mitigation construction. The purpose of this inspection is to determine if the mitigation project has been constructed in accordance with the agreement between the applicant and Ohio EPA. If necessary, Ohio EPA may make recommendations to improve the wetland. The applicant is responsible for undertaking any reasonable modifications identified by Ohio EPA.

The applicant is responsible for ensuring the wetland is not filled, drained, or otherwise converted to upland. If the property is sold, the deed shall ensure that the wetland will not be filled, drained, or otherwise converted to upland.





DEPARTMENT OF THE ARMY
PITTSBURGH DISTRICT, CORPS OF ENGINEERS
WILLIAM S. MOORHEAD FEDERAL BUILDING
1000 LIBERTY AVENUE
PITTSBURGH, PA 15222-4186

REPLY TO
ATTENTION OF:

July 28, 2000

Operations and Readiness Division
Regulatory Branch
199701201

Mr. Donald M. Brafford
Jack A. Hamilton & Associates, Inc.
Box 471
342 High Street
Flushing, Ohio 43977

Dear Mr. Brafford:

I refer to your Department of the Army Permit Application, submitted for the Bennoc Allison Adjacent Area Surface Mining Site, which proposes to construct two additional sediment ponds near the headwaters of two streams. The total area of stream and wetlands affected by these ponds is 0.253 acre and total length of stream affected is 669 feet. These streams are unnamed tributaries to Piney Creek, within Wayne Township, Belmont County, Ohio.

Activities associated with projects of this type are authorized by Nationwide Permit No. 21 (see enclosure), previously issued by the Corps of Engineers, for purposes of Section 404 of the Clean Water Act as published in the December 13, 1996 issue of the Federal Register.

Enclosed is a list of conditions which must be followed for the Nationwide Permit to be valid. Adherence to these conditions will permit you to proceed with the proposed project. **Please Note**, the attached Compliance Certification Form must be signed and returned to this office upon completion of the proposed work.

In addition to the attached conditions the following are considered special conditions of this authorization:

A. The conditions outlined in the Ohio Environmental Protection Agency Section 401 Water Quality Certification dated March 23, 2000, are included as conditions of this Federal authorization.

B. Copies of the wetland mitigation monitoring reports for the entire 0.64 acres of on-site wetland replacement, and Qualitative Habitat Evaluation Indexes for the stream restorations must be submitted to this office annually.

AEC 10176

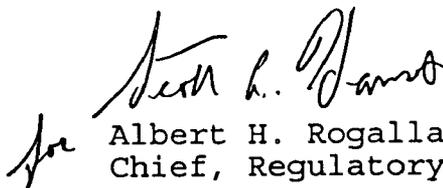
C. Because of the project being within the range of the Indiana bat, any trees with exfoliating bark within the project area should be saved whenever possible. If they must be cut, the may not be cut between April 15, and September 15. If such trees must be cut within this timeframe, mist net or other surveys should be conducted to determine if bats are present. Surveys should be designed and conducted in coordination with the U.S. Fish and Wildlife Service.

The verification of this Nationwide Permit is valid until July 28, 2002 unless the Nationwide Permit is modified, , suspended, or revoked. If project specifications are changed or work has not been initiated before July 28, 2002, please contact this office for further approval.

The issuance of this Nationwide Permit will not relieve you of the responsibility to obtain any other required state, local, or Federal authorizations.

If you have any questions, please contact Scott A. Hans at (412) 395-7154.

Sincerely,


for Albert H. Rogalla
Chief, Regulatory Branch

Enclosure

CF:

Ohio Environmental Protection Agency
Section 401 Coordinator
122 South front Street
Columbus, OH 43215

Bennoc Inc.

Compliance Certification Form

PERMIT NUMBER: 199701201

NAME OF PERMITTEE: Bennoc Inc.

DATE OF ISSUANCE: July 28, 2000

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers
Pittsburgh District
Regulatory Branch, Room 1834
William S. Moorhead Federal Building
1000 Liberty Avenue
Pittsburgh, PA 15222-4186

Please note that your permitted activity is subject to compliance inspection by a U.S. Army Corps of Engineers Representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

(21) **Surface Coal Mining Activities.** Activities associated with surface coal mining activities provided they are authorized by the Department of the Interior, Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. The notification must include an OSM or state approved mitigation plan. The Corps, at the discretion of the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or state agency has required one. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. (Also see 33 CFR 330.1(e)) (Sections 10 and 404)

Ohio State Certification for this nationwide permit has been denied. Individual certification is required.

NATIONWIDE PERMIT CONDITIONS

GENERAL CONDITIONS:

The following general conditions must be followed in order for any authorization by a NWP to be valid:

1. **Navigation.** No activity may cause more than a minimal adverse effect on navigation.
2. **Proper maintenance.** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. **Erosion and siltation controls.** Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.
4. **Aquatic life movements.** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.
5. **Equipment.** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. **Regional and case-by-case conditions.** The activity must comply with any regional conditions which may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state or tribe in its section 401 water quality certification.

7. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely effect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service.)

8. **Tribal rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. **Water quality certification.** In certain states, an individual Section 401 water quality certification must be obtained or waived (see 33 CFR 330.4(c)).

10. **Coastal zone management.** In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).

11. **Endangered Species.**

(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

(b) Authorization of an activity by a nationwide permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at <http://www.fws.gov/~r9endspp/endspp.html> and http://kingfish.spp.mnfs.gov/tmcintyr/prot_res.html#ES and Recovery, respectively.

12. *Historic properties.* No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)).

13. *Notification.*

Notification requirements have been satisfied.

14. *Compliance certification.* Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

- a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
- b. A statement that any required mitigation was completed in accordance with the permit conditions;
- c. The signature of the permittee certifying the completion of the work and mitigation.

15. *Multiple use of Nationwide permits.* In any case where any NWP number 12 through 40 is combined with any other NWP number 12 through 40, as part of a single and complete project, the permittee must notify the District Engineer in accordance with paragraphs a, b, and c on the "Notification" General Condition number 13. Any NWP number 1 through 11 may be combined with any other NWP without notification to the Corps, unless notification is otherwise required by the terms of the NWPs. As provided at 33 CFR 330.6(c) two or more different NWPs can be combined to authorize a single and complete project. However, the same NWP cannot be used more than once for a single and complete project.

SECTION 404 ONLY CONDITIONS:

In addition to the General Conditions, the following conditions apply only to activities that involve the discharge of dredged or fill material into waters of the U.S., and must be followed in order for authorization by the NWPs to be valid:

1. **Water supply intakes.** No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

2. **Shellfish production.** No discharge of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by NWP 4.

3. **Suitable material.** No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

4. **Mitigation.** Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e., on-site), unless the District Engineer approves a compensation plan that the District Engineer determines is more beneficial to the environment than on-site minimization or avoidance measures.

5. **Spawning areas.** Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

6. **Obstruction of high flows.** To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

7. **Adverse effects from impoundments.** If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

8. **Waterfowl breeding areas.** Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

9. **Removal of temporary fills.** Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

D. OHIO STATE CERTIFICATION GENERAL CONDITIONS FOR NATIONWIDE PERMITS.

The following general conditions apply to Nationwide Permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 26, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, and 40.

Steps shall be taken, upon completion of the projects, to ensure bank stability. This may include, but is not limited to, the placement of riprap or bank seeding.

Any damages to the immediate environment of the project by equipment needed for construction or hauling will be repaired immediately.

Care must be employed throughout the course of this project to avoid the creation of unnecessary turbidity which may degrade water quality or adversely affect aquatic life outside the project areas.

For Nationwide Permits 14, 21, 26 (1-3 acres), 29, 33, 37, and 38, that require Agency coordination, in accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.



State of Ohio Environmental Protection Agency

OHIO E.P.A.

STREET ADDRESS:

Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-2329

MAR 23 2000

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

ENTERED DIRECTOR'S JOURNAL

March 23, 2000

Re: Belmont County / Wayne Township
Grant of Section 401 Certification (Minimal Degradation Alternative)
Project to fill 0.15 acres of wetlands and 629 linear feet of two unnamed
tributaries to Piney Creek to facilitate a mining operation

Bennoc, Inc.
Attn: Larry Conway
P.O. Box 208
Morristown, Ohio 43759

I certify that this is a true and correct copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency.

Zona S. Clements 3-23-00

Ladies and Gentlemen:

Pursuant to Section 401 of the Federal Water Pollution Control Act, Public Law 95-217, the Director of Ohio Environmental Protection Agency hereby certifies that the above-referenced project will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act. This certification is specifically limited to a 401 certification with respect to water pollution and does not relieve the applicant of further certifications or permits as may be necessary under the law. I have determined that a lowering of water quality in unnamed tributaries to Piney Creek and wetlands as authorized by this certification is necessary. I have made this determination based upon the consideration of all public comments, and including the technical, social, and economic considerations concerning this application and its impact on waters of the state. This certification is issued subject to the following conditions:

Fill used in this project shall consist of suitable material free from toxic contaminants in other than trace quantities.

Steps shall be taken during construction to minimize bank erosion.

Steps must be employed throughout the course of this project to avoid the creation of unnecessary turbidity which may degrade water quality or adversely affect aquatic life outside of the project area.

This proposal may require an NPDES permit from Ohio EPA. For information concerning application procedures, contact Ohio EPA's Southeast District Office at 2195 Front Street, Logan, Ohio 43138.

Applicant will submit monitoring reports to Ohio EPA every year for five years.

Applicant will delineate the mitigation wetland the third and fifth year and provide a copy of the delineation to Ohio EPA with the yearly report.

Monitoring of wetland mitigation shall follow the attached "General Wetland Mitigation Monitoring Requirements".

Applicant will assess the mitigation wetland yearly using the latest version of Ohio EPA's Ohio Rapid Assessment Method for Wetlands (ORAM).

Applicant will reconstruct streams using the procedures described in ODNR's "A Natural Channel Design Procedure for Steep and Moderately Steep Streams".

Applicant will assess the streams yearly using Ohio EPA's Qualitative Habitat Evaluation Index (QHEI) and submit the completed form with the yearly report.

Bob Taft, Governor
Maureen O'Connor, Lieutenant Governor
Christopher Jones, Director

General Wetland Mitigation Monitoring Requirements

Annual water quality, hydrology and vegetation surveys shall be conducted. A report containing these data shall be submitted to Ohio EPA for each of five consecutive years following completion of mitigation construction. The first annual report is due to Ohio EPA by December 31 of the year following completion of mitigation construction. All subsequent reports shall be submitted by December 31 of each of the five monitoring years. The reports shall contain, at a minimum, the following information:

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Hydrology Monitoring: Water level data shall be collected in May and late August of each monitoring year. Ground water levels shall be measured in the absence of inundated conditions.

Vegetation Monitoring: The location and name of each plant community type within the mitigation area and buffer area shall be marked on a scaled drawing or scaled aerial photograph (base map) and named.

A representative observation point shall be selected in each plant community type in distinct wetland mitigation area. This shall be a point which best represents the characteristics of the entire plant community. The observation points shall be marked on the base map.

The dominant plant species shall be visually determined in each vegetation layer of each community type, and the scientific names of these species shall be included in the report. Dominant species are those species which have the greatest relative basal area (woody overstory), greatest height (woody overstory), greatest percentage of aerial coverage (herbaceous understory), and/or greatest number of stems (woody vines).

Each sample point shall be photo documented from the same position and angle during July of each monitoring year.

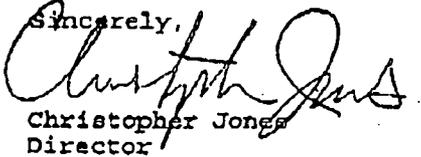
The applicant shall arrange an on-site mitigation meeting with Ohio EPA on the third year after wetland mitigation construction. The purpose of this inspection is to determine if the mitigation project has been constructed in accordance with the agreement between the applicant and Ohio EPA. If necessary, Ohio EPA may make recommendations to improve the wetland. The applicant is responsible for undertaking any reasonable modifications identified by Ohio EPA.

The applicant is responsible for ensuring the wetland is not filled, drained, or otherwise converted to upland. If the property is sold, the deed shall ensure that the wetland will not be filled, drained or otherwise converted to upland.

Bennoc, Inc.
March 23, 2000
Page 3

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code by any person who was a party to this proceeding. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Environmental Review Appeals Commission within thirty (30) days after the notice of the Director's action. A copy of the appeal must be served on the Director of the Ohio Environmental Protection Agency and the Environmental Enforcement Section of the Office of the Attorney General within three (3) days of the filing with the Commission. An appeal may be filed with the Environmental Review Appeals Commission, 236 East Town Street, Room 30, Columbus, Ohio 43266-0557.

Sincerely,



Christopher Jones
Director

cc: S, Hans, U.S. Army Corps of Engineers, Pittsburgh District
Dave Schulenberg, U.S. EPA, Region 5
Kent Kroonemeyer, U.S. Fish & Wildlife Service
Kim Baker, ODNR, Division of Real Estate & Land Management
M. Smith, DSW, CO
M. Kuklis, OEPA, SEDO
Marc Smith, EAU
401 file

Bennoc, Inc.
Section 401 Applications
Responsiveness Summary for February 1, 2000, Public Hearing

The following Responsiveness Summary was prepared by the Division of Surface Water of Ohio EPA to address comments and questions raised during the public participation component of the review of Bennoc, Inc.'s Section 401 application to impact streams and wetlands. Ohio EPA conducted the public hearing on February 1, 2000, at Barnesville Highschool, Barnesville, Ohio and accepted comments through February 14, 2000.

This Responsiveness Summary is intended to encompass all concerns, questions, and comments raised in letters received and from testimony given at the public hearing.

1. What is the time period established for recovery of the streams?

Ohio EPA requires the applicant to yearly monitor restored streams and wetlands for 5 years. The streams and wetlands will be monitored to ensure that the restored streams and wetlands are as good or better than those that are impacted within the five year period. The yearly reports will be provided to Ohio EPA and are available for public review. Wetland mitigation will be accomplished by enlarging an existing wetland. Stream mitigation will be accomplished by using "A Natural Channel Design Procedure for Steep and Moderately Steep Streams" developed by the Ohio Department of Natural Resources.

2. Mining should not be allowed within 100 feet of the streams, not 50 feet as proposed by the applicant.

The temporary placement of sediment ponds on the upper ends of the streams and the 50 foot buffer on the remaining length will be adequate to protect the streams. No vegetation can be removed from within this buffer.

3. The representation that the loss to the local economy would be significant if mining could not occur is not substantiated.

The impact on water quality will be low with only the temporary placement of sediment ponds on the upper ends of the streams and the 50-foot buffer on the remainder of the streams. It is not clear what would be the positive social and economic impacts of denying this water quality certification.

4. The applicant states that streams in this area not significantly used and this is not true.

Ohio EPA believes the applicant was referring to the streams proposed to be impacted and not to Captina Creek or Piney Creek.



COAL MINING AND RECLAMATION PERMIT APPLICATION TO REVISE A PERMIT (ARP)

Issued To: AMERICAN ENERGY CORP
43521 MAYHUGH HILL RD
BEALLSVILLE, OH 43716

Permit Number: D-1159
Application Number: R-1159-3

Telephone: (740) 926-9152

Effective: 01/14/2002

Expires: 01/25/2003

ARP Type:
Stream/Wetland Mitigation

The issuance of this ARP means only that the application to conduct a coal mining operation meets the requirements of Chapter 1513 of the Revised Code, and as such DOES NOT RELIEVE the operator of any obligation to meet other federal, state or local requirements.

This ARP is issued in accordance with and subject to the provisions, conditions, and limitations of Chapter 1513 of the Revised Code and Chapters 1501:13-1, 1501:13-3 through 1501:13-14 of the Administrative Code.

The approved water monitoring plan for this ARP is:

Quality: N/A

Quantity: N/A

Note: Any previous condition(s) imposed on this permit, or subsequent adjacent areas, also apply to this ARP unless noted otherwise.

Signature:

Michael J. Sporey by R. W. Gibson

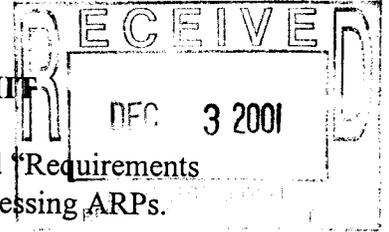
Chief, Mineral Resources Management

Date: 01/14/2002

OPERATOR

**OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINES AND RECLAMATION**

APPLICATION TO REVISE A COAL MINING PERMIT



Note: Refer to the Division's "General Guideline for Processing ARPs" and "Requirements for Specific Types of Common ARPs" for guidance on submitting and processing ARPs.

1. Applicant's Name American Energy Corporation, F.K.A. Bennoc, Inc.

Address 43521 Mayhugh Hill Road

City Beallsville State Ohio Zip 43716

Telephone Number 740 - 926 - 9152

2. Permit Number D-1159

3. Section of mining and reclamation plan to be revised:

Part 3, Page 27, Item D(18)

4. Describe in detail the proposed revision and submit any necessary drawings, plans, maps, etc.:

TO SUBMIT THE WETLAND MITIGATION PLAN. (Please note that this mitigation plan was submitted to and approved by OEPA prior to any permit transfer, therefore, the attached addenda is labeled "Bennoc, Inc.")

5. Describe in detail the reason for requesting the revision:

AS REQUESTED BY ODNR, DMRM TO LIFT CONDITION ON ISSUED ARP.

6. Will this revision constitute a significant alternation from the mining and reclamation operation contemplated in the original permit? Yes, No.

(Note: refer to paragraph (E) (2) of 1501:13-04-06 of the Ohio Administrative Code to determine if a revision is deemed significant.)

If "yes," complete the following items 7 through 9.

7. In the space below give the name and address of the newspaper in which the public notice is to be published.

N/A

8. In the space below give the text of the public notice that is to be published. (Include the information required by paragraph (A)(1) of 1501:13-05-01 of the Ohio Administrative Code.)

N/A

9. In the space below give the name and address of the public office where this application is to be filed for public viewing.

N/A

I, the undersigned, a responsible official of the applicant, do hereby verify the information contained in this revision request is true and correct to the best of my information and belief.

Robert D. Moore
Print Name

11/28/01
Date

[Signature]
Signature

President
Title

Sworn before me and subscribed in my presence this 28th day of November, 20 01

[Signature]
Notary Public

2001

FOR DIVISION USE ONLY

This request is hereby

APPROVED

[Signature]

Chief, Division of Mines and Reclamation

1-14-02
Date

RECLAMATION AND MITIGATION PLAN
BENNOG ALLISON ADJACENT AREA
SURFACE MINING PERMIT APPLICATION

This Mitigation Plan is based upon the MINIMAL DEGRADATION ALTERNATIVE as defined on pages 9 thru 15 of this document. The proposed mining will result in unavoidable impacts to 629 feet of stream, including the length of stream affected by pond water behind the dams. 0.15 acres of category 2 wetlands will be inundated by the pond in Unnamed Stream "H". The proposed mitigation is based upon the combined areas of wetland in the original area of this mining site combined with the area affected in this adjacent area. Both wetland Determination and stream studies were completed by 3D/International Division of BHI of Cincinnati, Ohio. The goal of this mitigation is to establish the highest potential use consistent with the morphology of the reclaimed area.

It is proposed to mitigate these waters in place after the mining operation is completed. During mining, water is monitored and treated to conform to N.P.D.E.S. requirements. This monitoring and treatment is done at or near the upstream end of the pond so that water quality is controlled as far away from the receiving stream as possible. Water monitoring and treatment includes the items listed on the "General Wetland Mitigation Monitoring Requirements" which is included as page 4 with this mitigation plan.

STREAM RECONSTRUCTION

Pond 009 and 010 will be removed after completion of mining. Pond 009 affected a total of 286 feet of stream including the length of the pond. Pond 010 affected 343 feet. The streams upstream of the dam sites will be reconstructed as close to pre-mining conditions as possible. The stream bed configuration and meanders will be reproduced. Only that area directly affected by the dam and pond will be reconstructed. These streams will be returned to their original beds after completion of mining.

Pond 009 will be reclaimed at a grade of 0.0035 and pond 010 will be reclaimed at a grade of 0.03. If the 2 year 6 hour storm produces appropriate flow rates, a grass lined trapezoidal channel will be constructed. Graded rock may be incorporated on outside turns and on areas that could be subject to erosion. The reconstructed channels will approximate a Rosgen Type C configuration.

STREAM BUFFER ZONES:

A buffer zone will be established along the reconstructed streams. The buffer zone will extend a distance of 50 feet on either side of the stream. These areas will be planted with the following mixture of vegetation:

<u>SPECIES</u>	<u>CONCENTRATION</u>
Silky Dogwood	8 X 8 grid
Red pine	8 X 8 grid
American sycamore	8 X 8 grid
Foxtail millet	10 lb/acre
Redtop	2 lb/acre
Birdsfoot trefoil	6 lb/acre

WETLAND MITIGATION:

There are 0.15 acres of wetland affected on this adjacent area. There were 0.273 acres affected on the original permit making a total of 0.423 acres to be mitigated. At a ratio of 1 1/2:1, the required mitigation for the entire site is 0.635 acres for the entire permit area including the original. There were 0.54 acres of wetland mitigation included in the original mining area leaving 0.095 acres of remaining mitigation required.

It is proposed to mitigate the new disturbance by simply adding a 0.095 acre (4138 S.F.) Area to wetland #5. This wetland was delineated on the original permit. It is

located near Township Road 74. The existing wetland has been graded as a palustrine emergent scrub shrub wetland. It is dominated by grasses, sedges and bulrushes. This existing wetland area is located around the perimeter of a small pond and has been established for many years. These features should assure the success of the mitigation. During reclamation, the mitigative area will be configured to provide the widths, depths and flow characteristics required.

Since this is an existing wetland located on the perimeter of a pond, only one plant zone is proposed. This will be zone #3, shallow water extending into the fringe. After preparation, soft rush and sedge will be planted in the mitigative area. Soft rush stock will be rhizomes planted at 6 feet on center. Sedge stock will be seed dispersed at the rate of 1/2 lb/acre.

MITIGATION CONTINGENCY PLAN:

Should it become evident that the wetland mitigation plan has failed, steps will be taken to remedy the failure. Replanting of any significant bare spots which develop in the grasses or legumes will be undertaken. If trees or shrubs have failed, replanting of the necessary replacement species will be undertaken in the same growing season.

If it becomes necessary to replant the entire area, then this will be undertaken during the following spring.

Should the integrity of the reconstructed stream channels deteriorate to the point that significant erosion is occurring, then the erosion damage will be repaired. If it becomes evident that the design is inadequate then new specifications will be developed and implemented.

SUCCESSION:

The mining company has been made aware that the mitigative wetland area cannot ever be filled, drained or otherwise converted to upland and that if the property is ever sold, the deed shall ensure that the wetland will not be so converted. This information was conveyed to the company by letter dated August 17, 1999.

General Wetland Mitigation Monitoring Requirements

Annual water quality, hydrology and vegetation surveys shall be conducted. A report containing these data shall be submitted to Ohio EPA for each of five consecutive years following completion of mitigation construction. The first annual report is due to Ohio EPA by December 31 of the year following completion of mitigation construction. All subsequent reports shall be submitted by December 31 of each of the five monitoring years. The reports shall contain, at a minimum, the following information:

Water Chemistry Monitoring: A grab sample shall be collected in May of each monitoring year in each wetland mitigation area. The samples shall be analyzed for ammonia, nitrates, nitrite, carbon, total sulfates, total iron, total manganese, specific conductivity, pH, turbidity, total suspended solids, heavy metals, and biochemical oxygen demand.

Hydrology Monitoring: Water level data shall be collected in May and late August of each monitoring year. Ground water levels shall be measured in the absence of inundated conditions.

Vegetation Monitoring: The location and name of each plant community type within the mitigation area and buffer area shall be marked on a scaled drawing or scaled aerial photograph (base map) and named.

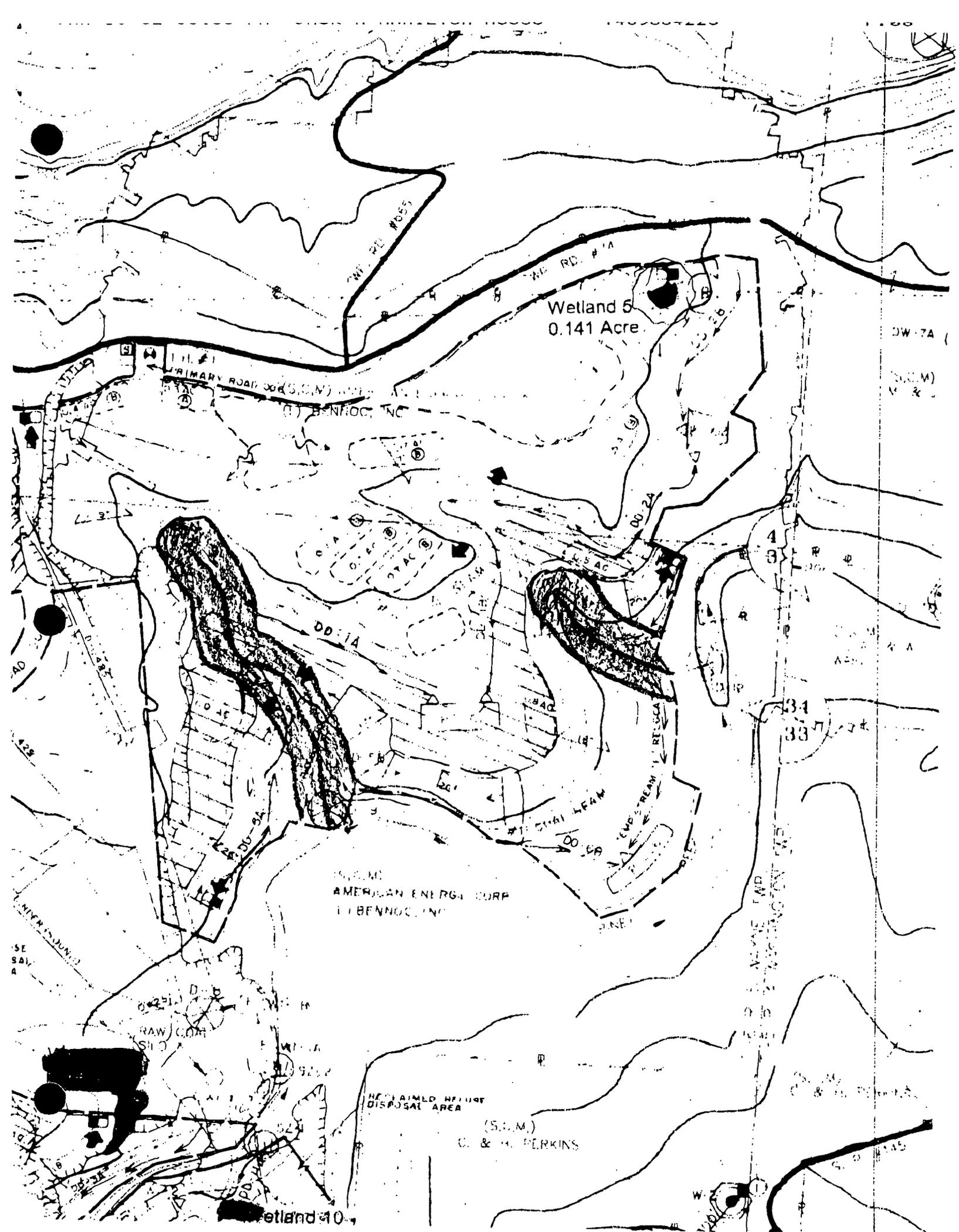
A representative observation point shall be selected in each plant community type in each distinct wetland mitigation area. This shall be a point which best represents the characteristics of the entire plant community. The observation points shall be marked on the base map.

The dominant plant species shall be visually determined in each vegetation layer of each community type, and the scientific names of these species shall be included in the report. Dominant species are those species which have the greatest relative basal area (woody overstory), greatest height (woody understory), greatest percentage of aerial coverage (herbaceous understory, and/or greatest number of stems (woody vines).

Each sample point shall be photo-documented from the same position and angle during July of each monitoring year.

The applicant shall arrange an on-site mitigation meeting with Ohio EPA on the third year after wetland mitigation construction. The purpose of this inspection is to determine if the mitigation project has been constructed in accordance with the agreement between the applicant and Ohio EPA. If necessary, Ohio EPA may make recommendations to improve the wetland. The applicant is responsible for undertaking any reasonable modifications identified by Ohio EPA.

The applicant is responsible for ensuring the wetland is not filled, drained, or otherwise converted to upland. If the property is sold, the deed shall ensure that the wetland will not be filled, drained, or otherwise converted to upland.





DEPARTMENT OF THE ARMY
PITTSBURGH DISTRICT, CORPS OF ENGINEERS
WILLIAM S. MOORHEAD FEDERAL BUILDING
1000 LIBERTY AVENUE
PITTSBURGH, PA 15222-4186

REPLY TO
ATTENTION OF:

July 28, 2000

Operations and Readiness Division
Regulatory Branch
199701201

Mr. Donald M. Brafford
Jack A. Hamilton & Associates, Inc.
Box 471
342 High Street
Flushing, Ohio 43977

Dear Mr. Brafford:

I refer to your Department of the Army Permit Application, submitted for the Bennoc Allison Adjacent Area Surface Mining Site, which proposes to construct two additional sediment ponds near the headwaters of two streams. The total area of stream and wetlands affected by these ponds is 0.253 acre and total length of stream affected is 669 feet. These streams are unnamed tributaries to Piney Creek, within Wayne Township, Belmont County, Ohio.

Activities associated with projects of this type are authorized by Nationwide Permit No. 21 (see enclosure), previously issued by the Corps of Engineers, for purposes of Section 404 of the Clean Water Act as published in the December 13, 1996 issue of the Federal Register.

Enclosed is a list of conditions which must be followed for the Nationwide Permit to be valid. Adherence to these conditions will permit you to proceed with the proposed project. **Please Note**, the attached Compliance Certification Form must be signed and returned to this office upon completion of the proposed work.

In addition to the attached conditions the following are considered special conditions of this authorization:

A. The conditions outlined in the Ohio Environmental Protection Agency Section 401 Water Quality Certification dated March 23, 2000, are included as conditions of this Federal authorization.

B. Copies of the wetland mitigation monitoring reports for the entire 0.64 acres of on-site wetland replacement, and Qualitative Habitat Evaluation Indexes for the stream restorations must be submitted to this office annually.

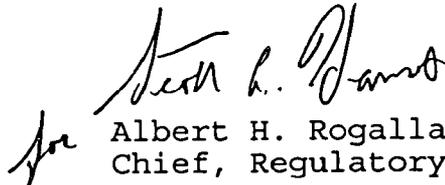
C. Because of the project being within the range of the Indiana bat, any trees with exfoliating bark within the project area should be saved whenever possible. If they must be cut, they may not be cut between April 15, and September 15. If such trees must be cut within this timeframe, mist net or other surveys should be conducted to determine if bats are present. Surveys should be designed and conducted in coordination with the U.S. Fish and Wildlife Service.

The verification of this Nationwide Permit is valid until July 28, 2002 unless the Nationwide Permit is modified, suspended, or revoked. If project specifications are changed or work has not been initiated before July 28, 2002, please contact this office for further approval.

The issuance of this Nationwide Permit will not relieve you of the responsibility to obtain any other required state, local, or Federal authorizations.

If you have any questions, please contact Scott A. Hans at (412) 395-7154.

Sincerely,


Albert H. Rogalla
Chief, Regulatory Branch

Enclosure

CF:

Ohio Environmental Protection Agency
Section 401 Coordinator
122 South front Street
Columbus, OH 43215

Bennoc Inc.

Compliance Certification Form

PERMIT NUMBER: 199701201

NAME OF PERMITTEE: Bennoc Inc.

DATE OF ISSUANCE: July 28, 2000

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers
Pittsburgh District
Regulatory Branch, Room 1834
William S. Moorhead Federal Building
1000 Liberty Avenue
Pittsburgh, PA 15222-4186

Please note that your permitted activity is subject to compliance inspection by a U.S. Army Corps of Engineers Representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

(21) **Surface Coal Mining Activities.** Activities associated with surface coal mining activities provided they are authorized by the Department of the Interior, Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. The notification must include an OSM or state approved mitigation plan. The Corps, at the discretion of the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or state agency has required one. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. (Also see 33 CFR 330.1(e)) (Sections 10 and 404)

Ohio State Certification for this nationwide permit has been denied. Individual certification is required.

NATIONWIDE PERMIT CONDITIONS

GENERAL CONDITIONS:

The following general conditions must be followed in order for any authorization by a NWP to be valid:

1. **Navigation.** No activity may cause more than a minimal adverse effect on navigation.
2. **Proper maintenance.** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. **Erosion and siltation controls.** Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.
4. **Aquatic life movements.** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.
5. **Equipment.** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. **Regional and case-by-case conditions.** The activity must comply with any regional conditions which may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state or tribe in its section 401 water quality certification.

7. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely effect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service.)

8. **Tribal rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. **Water quality certification.** In certain states, an individual Section 401 water quality certification must be obtained or waived (see 33 CFR 330.4(c)).

10. **Coastal zone management.** In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).

11. **Endangered Species.**

(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

(b) Authorization of an activity by a nationwide permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at <http://www.fws.gov/~r9endspp/endspp.html> and http://kingfish.spp.mnfs.gov/tmcintyr/prot_res.html#ES and Recovery, respectively.

12. *Historic properties.* No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)).

13. *Notification.*

Notification requirements have been satisfied.

14. *Compliance certification.* Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

- a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
- b. A statement that any required mitigation was completed in accordance with the permit conditions;
- c. The signature of the permittee certifying the completion of the work and mitigation.

15. *Multiple use of Nationwide permits.* In any case where any NWP number 12 through 40 is combined with any other NWP number 12 through 40, as part of a single and complete project, the permittee must notify the District Engineer in accordance with paragraphs a, b, and c on the "Notification" General Condition number 13. Any NWP number 1 through 11 may be combined with any other NWP without notification to the Corps, unless notification is otherwise required by the terms of the NWPs. As provided at 33 CFR 330.6(c) two or more different NWPs can be combined to authorize a single and complete project. However, the same NWP cannot be used more than once for a single and complete project.

SECTION 404 ONLY CONDITIONS:

In addition to the General Conditions, the following conditions apply only to activities that involve the discharge of dredged or fill material into waters of the U.S., and must be followed in order for authorization by the NWPs to be valid:

1. *Water supply intakes.* No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

2. *Shellfish production.* No discharge of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by NWP 4.

3. *Suitable material.* No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

4. *Mitigation.* Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e., on-site), unless the District Engineer approves a compensation plan that the District Engineer determines is more beneficial to the environment than on-site minimization or avoidance measures.

5. *Spawning areas.* Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

6. *Obstruction of high flows.* To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

7. *Adverse effects from impoundments.* If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

8. *Waterfowl breeding areas.* Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

9. *Removal of temporary fills.* Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

D. OHIO STATE CERTIFICATION GENERAL CONDITIONS FOR NATIONWIDE PERMITS.

The following general conditions apply to Nationwide Permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 26, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, and 40.

Steps shall be taken, upon completion of the projects, to ensure bank stability. This may include, but is not limited to, the placement of riprap or bank seeding.

Any damages to the immediate environment of the project by equipment needed for construction or hauling will be repaired immediately.

Care must be employed throughout the course of this project to avoid the creation of unnecessary turbidity which may degrade water quality or adversely affect aquatic life outside the project areas.

For Nationwide Permits 14, 21, 26 (1-3 acres), 29, 33, 37, and 38, that require Agency coordination, in accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i) , the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.



State of Ohio Environmental Protection Agency

OHIO E.P.A.

STREET ADDRESS:

Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-2329

MAR 23 2000

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

March 23, 2000

ENTERED DIRECTOR'S JOURNAL

Re: Belmont County / Wayne Township
Grant of Section 401 Certification (Minimal Degradation Alternative)
Project to fill 0.15 acres of wetlands and 629 linear feet of two unnamed
tributaries to Piney Creek to facilitate a mining operation

Bennoc, Inc.
Attn: Larry Conway
P.O. Box 208
Morristown, Ohio 43759

I certify that this is a true and correct copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency.

Zona R. Clements 3-23-00

Ladies and Gentlemen:

Pursuant to Section 401 of the Federal Water Pollution Control Act, Public Law 95-217, the Director of Ohio Environmental Protection Agency hereby certifies that the above-referenced project will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act. This certification is specifically limited to a 401 certification with respect to water pollution and does not relieve the applicant of further certifications or permits as may be necessary under the law. I have determined that a lowering of water quality in unnamed tributaries to Piney Creek and wetlands as authorized by this certification is necessary. I have made this determination based upon the consideration of all public comments, and including the technical, social, and economic considerations concerning this application and its impact on waters of the state. This certification is issued subject to the following conditions:

Fill used in this project shall consist of suitable material free from toxic contaminants in other than trace quantities.

Steps shall be taken during construction to minimize bank erosion.

Steps must be employed throughout the course of this project to avoid the creation of unnecessary turbidity which may degrade water quality or adversely affect aquatic life outside of the project area.

This proposal may require an NPDES permit from Ohio EPA. For information concerning application procedures, contact Ohio EPA's Southeast District Office at 2195 Front Street, Logan, Ohio 43138.

Applicant will submit monitoring reports to Ohio EPA every year for five years.

Applicant will delineate the mitigation wetland the third and fifth year and provide a copy of the delineation to Ohio EPA with the yearly report.

Monitoring of wetland mitigation shall follow the attached "General Wetland Mitigation Monitoring Requirements".

Applicant will assess the mitigation wetland yearly using the latest version of Ohio EPA's Ohio Rapid Assessment Method for Wetlands (ORAM).

Applicant will reconstruct streams using the procedures described in ODNR's "A Natural Channel Design Procedure for Steep and Moderately Steep Streams".

Applicant will assess the streams yearly using Ohio EPA's Qualitative Habitat Evaluation Index (QHEI) and submit the completed form with the yearly report.

Bob Taft, Governor
Maureen O'Connor, Lieutenant Governor
Christopher Jones, Director

General Wetland Mitigation Monitoring Requirements

Annual water quality, hydrology and vegetation surveys shall be conducted. A report containing these data shall be submitted to Ohio EPA for each of five consecutive years following completion of mitigation construction. The first annual report is due to Ohio EPA by December 31 of the year following completion of mitigation construction. All subsequent reports shall be submitted by December 31 of each of the five monitoring years. The reports shall contain, at a minimum, the following information:

Water Chemistry Monitoring: A grab sample shall be collected in May of each monitoring year in each wetland mitigation area. The samples shall be analyzed for ammonia, nitrates, nitrite, carbon, total sulfates, total iron, total manganese, specific conductivity, pH, turbidity, total suspended solids, heavy metals, and biochemical oxygen demand.

Hydrology Monitoring: Water level data shall be collected in May and late August of each monitoring year. Ground water levels shall be measured in the absence of inundated conditions.

Vegetation Monitoring: The location and name of each plant community type within the mitigation area and buffer area shall be marked on a scaled drawing or scaled aerial photograph (base map) and named.

A representative observation point shall be selected in each plant community type in distinct wetland mitigation area. This shall be a point which best represents the characteristics of the entire plant community. The observation points shall be marked on the base map.

The dominant plant species shall be visually determined in each vegetation layer of each community type, and the scientific names of these species shall be included in the report. Dominant species are those species which have the greatest relative basal area (woody overstory), greatest height (woody overstory), greatest percentage of aerial coverage (herbaceous understory), and/or greatest number of stems (woody vines).

Each sample point shall be photo documented from the same position and angle during July of each monitoring year.

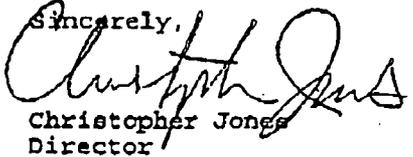
The applicant shall arrange an on-site mitigation meeting with Ohio EPA on the third year after wetland mitigation construction. The purpose of this inspection is to determine if the mitigation project has been constructed in accordance with the agreement between the applicant and Ohio EPA. If necessary, Ohio EPA may make recommendations to improve the wetland. The applicant is responsible for undertaking any reasonable modifications identified by Ohio EPA.

The applicant is responsible for ensuring the wetland is not filled, drained, or otherwise converted to upland. If the property is sold, the deed shall ensure that the wetland will not be filled, drained or otherwise converted to upland.

Bennoc, Inc.
March 23, 2000
Page 3

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code by any person who was a party to this proceeding. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Environmental Review Appeals Commission within thirty (30) days after the notice of the Director's action. A copy of the appeal must be served on the Director of the Ohio Environmental Protection Agency and the Environmental Enforcement Section of the Office of the Attorney General within three (3) days of the filing with the Commission. An appeal may be filed with the Environmental Review Appeals Commission, 236 East Town Street, Room 30, Columbus, Ohio 43266-0557.

Sincerely,



Christopher Jones
Director

cc: S, Hans, U.S. Army Corps of Engineers, Pittsburgh District
Dave Schulenberg, U.S. EPA, Region 5
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401 file

Bennoc, Inc.
Section 401 Applications
Responsiveness Summary for February 1, 2000, Public Hearing

The following Responsiveness Summary was prepared by the Division of Surface Water of Ohio EPA to address comments and questions raised during the public participation component of the review of Bennoc, Inc.'s Section 401 application to impact streams and wetlands. Ohio EPA conducted the public hearing on February 1, 2000, at Barnesville Highschool, Barnesville, Ohio and accepted comments through February 14, 2000.

This Responsiveness Summary is intended to encompass all concerns, questions, and comments raised in letters received and from testimony given at the public hearing.

1. What is the time period established for recovery of the streams?

Ohio EPA requires the applicant to yearly monitor restored streams and wetlands for 5 years. The streams and wetlands will be monitored to ensure that the restored streams and wetlands are as good or better than those that are impacted within the five year period. The yearly reports will be provided to Ohio EPA and are available for public review. Wetland mitigation will be accomplished by enlarging an existing wetland. Stream mitigation will be accomplished by using "A Natural Channel Design Procedure for Steep and Moderately Steep Streams" developed by the Ohio Department of Natural Resources.

2. Mining should not be allowed within 100 feet of the streams, not 50 feet as proposed by the applicant.

The temporary placement of sediment ponds on the upper ends of the streams and the 50 foot buffer on the remaining length will be adequate to protect the streams. No vegetation can be removed from within this buffer.

3. The representation that the loss to the local economy would be significant if mining could not occur is not substantiated.

The impact on water quality will be low with only the temporary placement of sediment ponds on the upper ends of the streams and the 50-foot buffer on the remainder of the streams. It is not clear what would be the positive social and economic impacts of denying this water quality certification.

4. The applicant states that streams in this area not significantly used and this is not true.

Ohio EPA believes the applicant was referring to the streams proposed to be impacted and not to Captina Creek or Piney Creek.